Section 4 of the abovementioned Ordinance provides as follows :—

4. (1) If any person against whom an order has been applied for or made for the maintenance of his wife offers to maintain his wife on condition of her living with him, and his wife refuses to live with him, the Court may consider any grounds of refusal stated by such wife, and may make or enforce the order aforesaid, notwithstanding such offer, if satisfied that such person is living in adultery or that he has habitually treated his wife with cruelty.

(2) No wife shall be entitled to receive an allowance from her husband under this Ordinance if she is living in adultery, or if without any sufficient reason she refuses to live with her husband.

The only reason given by the learned Magistrate for making the order is that the appellant made no effort to take his wife home.

In my opinion if a wife leaves the matrimonial home and her husband offers to maintain her on condition that she lives with him in the matrimonial home there is no legal obligation on the husband to take positive steps to bring her home. By what means and in what manner the wife is to return to her husband is a matter which depends upon the good sense of the parties but it is not laid down that the husband should bring his wife back to the matrimonial home.

I would therefore allow the appeal and set aside the order. The deposit should be paid out to the appellant's solicitors.

The appeal having been allowed, counsel for the appellant intimated, after discussion, that he would seek the aid of the Social Welfare Department in an endeavour to bring the parties together.

Appeal allowed.

Solicitors for the appellant: *Laycock & Ong.*

ONG CHIN SENG v. CHOP LEAN KOOI MOTORS

[O. C. J. (Hill J.) April 23, 1955]

[Alor Star — Civil Suit No. 117 of 1954]

Common Law — Lien — General lien and particular lien — Evidence to justify lien.

This was an action brought by the plaintiff against the defendant for alleged wrongful detention of his lorry. The defence was that the defendant was exercising his common law right of lien, as charges for repairs had not been paid.

Held: there was no evidence in this case that the plaintiff had refused to pay for the charges nor was there evidence of local custom and usage to establish the lien and therefore the defendant's retention of the plaintiff's lorry was wrongful.

CIVIL SUIT.

Nancy Yeap for the plaintiff.

A. Jayadewa for the defendant.

Hill J. : — In August last the plaintiff's lorry broke down and was towed to the defendant's garage where fairly extensive repairs were done to it. These were completed by the 28th August and on that day one of the plaintiff's drivers drove away the lorry with defendant's permission.

Three days later it was again in defendant's garage for very minor servicing and was again delivered to the plaintiff's driver.

On the 19th September the lorry again broke down and for the third time was taken to defendant's garage. On this occasion, as the defendant had not been paid for the work done and improvements made to the lorry, he detained it and this case results.

There was no evidence that plaintiff at any time refused to pay the bills that had been rendered by the defendant. He had queried one item for $260 for work on the engine and suggested that this charge was too high. On the 15th September plaintiff wrote the defendant as follows :—

"I have received the following two invoices. It is found that in the contents the following: 'Charges for taking down engine' is as high as $260. I do not know if a mistake was made in your bill, for motor merchants in this town charge only about a hundred dollars for this item: Charges for taking down engine.' Even a European firm would charge only $110 - $120 but your charges actually exceeded by more than half which is indeed deeply alarming. It is my wish and hope that you will reckon and amend accordingly so as to smooth the way."

Three days later the lorry was detained.

The defence was that the defendant was exercising his common law right of lien. I here quote paragraphs 704, 708 and part of paragraph 709 from pages 560, 561 and 563 of *Halsbury's* Laws of England, 2nd edition, Volume 20 :—

"To establish a general lien arising by usage in a particular case, for instance, in a particular locality, the usage must be certain and reasonable and so universally acquiesced in that every one in the trade knew of, or on inquiry could have ascertained, its existence. To establish a general lien of this nature there must be satisfactory evidence of numerous and important instances of its exercise; if the evidence is sufficient to establish the usage, the parties are presumed to be aware of, and are bound by, the usage. The question whether the lien exists is one of fact.

A particular lien arising by agreement on property deposited overrides the general lien of the depositee on such property arising by virtue of usage.

A particular lien is the right to retain goods in respect of which charges have been incurred until such charges have been paid: if the owner of the goods is willing to satisfy such charges, the goods cannot be retained until payment of the general balance due to the person having the particular lien.

As general liens may arise from general usage or by express contract, it follows, a *fortiori*, that particular liens may arise in the same manner."

I had no evidence, much less satisfactory evidence of numerous and important instances of the custom defendant stated was in existence and adopted by him.

Indeed, his release on two occasions of the lorry contradicted this evidence.

I am of opinion therefore that as the plaintiff had not refused to pay and as local custom and usage had not been proved the defendant's retention of plaintiff's lorry was wrongful.

I must, however, criticise the plaintiff for acting, in my opinion, most unreasonably. At any time after receiving the message on the 19th September that defendant had retained the lorry, he could have paid the bills, under protest if necessary, and obtained possession of his lorry.

It is clear from the telegram plaintiff sent that he was more concerned with "loss of face" than with the temporary loss of his lorry. The telegram was as follows: "Release P5178 Lorry immediately Libel Suit contemplated."

These are factors that must be taken into consideration in assessing damages. Prompt and reasonable action by the plaintiff by paying the amount claimed would have caused the release of the lorry in at the most two days. I see no reason for not accepting his figure of $100 a day for hiring another lorry and I consider $200 a reasonable and sufficient sum as damages in the circumstances of this case.

I therefore give judgment for the plaintiff for $200 and costs.

Order accordingly.

Solicitors: *Hogan, Adams & Allan; Conaghan, Wreford, & Thornton.*

WOO PENG CHONG v. MALAYAN TOBACCO DISTRIBUTORS LTD.

[O. C. J. (Buhagiar J.) June 27, 1955]

[K. L. — Civil Suit No. 332 of 1955]

Negligence — Whether breach of duty imposed by Statute gives a right of civil action.

This was an action for damages in respect of personal injuries sustained by the plaintiff when a motor-cycle he was riding came in collision with a motor-car belonging to the defendants and driven at that time by their servant. The learned Judge found that there was no negligence on the part of the defendants and dismissed the suit. One of the submissions made on behalf of the plaintiff was that the defendants' driver was wrong in crossing from one lane to the other through the gap in the kerb and that he should have driven right up to the end of the kerb and "U" turned there to get to the other side of the road.

Held: even if what the defendants' driver did was a breach of a regulation, such contravention by him was immaterial in default of any negligence being the cause of the accident.

[Editorial Note: See the case of Ng Siew Eng & Anor. v. Loh Tuan Woon (1955) M.L.J. 89].

Cases referred to:—

(1) *Cutler v. Wandsworth Stadium Ltd.* (1949) A.C. 398; (1949) 1 All E.R. 544.

(2) *Newman v. Francis* (1953) 1 W.L.R. 402; *The Times*, January 22, 1953.

ACTION FOR DAMAGES.

M. L. R. Doraiswamy Aiyer for the plaintiff.

D. G. Rawson for the defendants.

Buhagiar J.: — In this suit the plaintiff claimed damages in respect of personal injuries sustained by him on the 8th December, 1953, when the motor-cycle he was riding came in collision with a motor-car belonging to the defendant firm and driven at the time by Saidi bin Zainudin, a servant of the defendant firm.

The accident occurred in Ampang Road, Kuala Lumpur, opposite the Federal Dispensary and on the Federal Dispensary side of the road. That part of Ampang Road where the accident occurred is divided in two lanes by a concrete kerb along the middle so that traffic coming towards Kuala Lumpur from Ampang travel on one side of the kerb and traffic away from Kuala Lumpur towards Ampang travel on the other side.

The defendant's car was at the time being used by Mr. J. C. Cordy of the defendant firm. He went to the Federal Dispensary and the car was parked by the driver in the car park by the Federal Dispensary. When Mr. Cordy finished his business at the Federal Dispensary he went to the car with the intention of proceeding towards Kuala Lumpur. The car left the car park and went up to the kerb with the object of crossing through a gap in the kerb to the other side of the road. Before the car crossed to the other side of the road the plaintiff's motor-cycle came into collision with the front part of the car and he was thrown right over the bonnet.

Now, two versions were given as to how this accident occurred. The plaintiff stated that the defendants' car shot out of the car park to the middle of the road and he had no opportunity of avoiding it and collided with it. He said he was keeping a proper look-out and was going at a reasonable speed that is about 25 miles per hour.

The defendants' version is that the car had been at a standstill when the accident occurred and the cause of the accident was that the plaintiff was not keeping a proper look-out and was going at an excessive speed.

Saidi bin Zainudin (D. W. 3) the driver of the defendants' car stated that on leaving the car park he looked for traffic coming from Kuala Lumpur direction, saw none and went up to the gap in the kerb